IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 37

DELLA HADLEY, et al.,

Appellants,

against

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, et al.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, *AMICUS CURIAE*, IN SUPPORT OF AFFIRMANCE

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The Attorney General of the State of New York submits this brief in support of the position of the appellees, seeking affirmance of the judgment appealed from.

Statement

The New York Attorney General, by reason of his statewide interest in matters relating to the effective representation of voters in various legislative bodies throughout the State has previously submitted briefs to this

Court, in an *amicus* capacity, with reference to related situations, in *Avery* v. *Midland County*, 390 U. S. 474 (1968) and in *Sailors, et al.* v. *Board of Education of the County of Kent, et al.*, 387 U. S. 105 (1967).

ARGUMENT

The equal representation rule set forth in *Reynolds* v. *Sims*, 377 U. S. 533 (1964), made applicable in *Avery* v. *Midland County*, 390 U. S. 474 (1968), to local legislative bodies with general governmental powers, should not be extended to special purpose governmental units.

We need not repeat what we have argued to this Court in *Avery* (*supra*) and in *Board of Supervisors* v. *Bianchi*, 387 U. S. 97 (1967). Nor we stress the myriad forms which local governmental units may assume. This fact was recognized by Justice White in his *Avery* opinion for the Court's majority (390 U. S., at pp. 480-481).

The New York Attorney General urged in *Sailors*, *Bianchi* and in *Avery* that the "one-person, one-vote" principle should be extended to local governmental units, but that such local subdivisions of state government should be granted some leeway and flexibility in their observance of the principle. The decisions of this Court in the cited cases permit such "leeway" and "experimentation".

We support here the position of the Attorney General of the State of Missouri that the equal representation rule should not be extended, in all cases, to local school districts. We submit that the recent decision in *Kramer* v. *Union Free School District*, 395 U. S. 621 (1969), is not controlling on this appeal. We urge that a valid restriction exists between the situation in *Kramer*, where many classes of citizens were completely deprived of the right

to vote at all and the vote "dilution" situations which are presented under the *Reynolds* principle. Creation of viable special purpose districts may demand the recognition of historical, geographical and boundary considerations, as well as the continued effective functioning of forms of town, village and city government, in the assignment of voting powers to the voters entitled to participate in *special* district elections. The *administrative,* rather than the legislative nature of the functions to be performed by the local special purpose district, is certainly a factor that should also be weighed. *Sailors* v. *Board of Education,* 387 U. S. 105, 110 (1967); *Shanker* v. *Board of Regents,* 27 A D 2d 84 (2nd Dept., 1966), *aff'd* 19 N Y 2d 951 (1967).

The determination in this case is of particular moment to the People of the State of New York because of the variety of its local governmental units which are likely to be affected thereby. In New York City alone, the validity of the voting powers of the individual borough presidents, who represent constituencies with varying populations, but have equal voting power, may be affected by the decision in this case. See *McMillan* v. *Wagner,* 239 F. Supp. 32 (U.S.D.C., So. D. N. Y., 1964). So, too, will the validity of the most recent experiment undertaken to provide a workable solution to the problem of New York City school decentralization, pursuant to which each of the City's boroughs, is granted a single representative on the City's Central Board of Education, in addition to the two members appointable by the Mayor (L. 1969, ch. 330).

No simple power or factor assigned to a local government unit, which does not possess general governmental powers, should be sufficient to bring that unit within the *Reynolds* rule—whether that factor be a budget-making or taxing power or the power to exercise even a specialized type of rule-making or legislative power. The states should be allowed, within the limits of good faith experi-

mentation, to continue to solve their local problems in the manner their general legislative bodies, their State or local legislatures, deem most suitable to and effective for the solution of those problems. *Avery* (*supra*, pp. 485-486).

Legislative bodies with *general legislative powers* (whether state-wide or local) which design subordinate units of government, with specialized functions, which do *not* effectively accomplish the purposes for which these units have been designed, must face their electorates. Those electorates can, when necessary or appropriate, command the revision of the form and powers of *special purpose* districts or units of government (*Avery, supra;* opinion by *Harlan,* J., 390 U. S., at p. 494). This Court need not and should not get bogged down, however, in a morass or "quagmire" (369 U. S., at p. 268) of details as to the manner in which an estimated 80,000 units of local government, many of them special purpose districts, should be constructed. *Avery, supra,* 390 U. S., at pp. 483, 487. This much has been conceded even by exponents of the *Reynolds* rule. See Weinstein, 65 Col. L. Rev. 21, 31-40 (1965). *Avery,* we submit, wisely limited its extension of the *Reynolds* rule to units of local government with general governmental powers (p. 485).

CONCLUSION

The order appealed from should be affirmed.

Dated: New York, New York, October 28, 1969.

Respectfully submitted,

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